IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.25 OF 2005
IN
CRIMINAL REVISION APPLICATION (ST.) NO.3499 OF 2005

Smita Shantaprasad Kshetramade ... Applicant

Vs.

1. Ratnakar Pandurang Desai
(deleted)
2. Mahendra Veerji Chheda & Ors. ... Respondents

Mr. P.G. Karande for the applicant.

Mr. Sunil Mogre for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 28TH MARCH, 2005.

P.C.:-

1. There is a delay of about 13 days in filing the civil revision application. Hence, the applicant has filed the present civil application for condonation of delay of about 13 days in preferring the civil revision application.

2. I have heard Mr. Karande, the learned counsel appearing for the applicant and Mr. Mogre, the learned counsel appearing for the respondents.

3. Mr. Mogre, the learned counsel for the respondents submitted that under section 5 of the Limitation Act, any

appeal or any application may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. The explanation to the said section states that the fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of the said section. He further submitted that under section 14 of the Limitation Act, the time taken for prosecuting a litigation bonafide in a court without jurisdiction is excluded while computing the period of limitation. He submitted that to get the benefit of section 14, the plaintiff must prosecute with due diligence another civil proceeding in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. The learned counsel submitted that in this case, there is absence of good faith and sufficient cause. The application does not make out any case for condonation of delay. The learned counsel contended that the applicant had initially in the month of November 2004, filed a writ petition. She then withdrew the writ petition. Then in December, 2004, she filed a first appeal. There was a delay of 24 days. That delay was condoned by this court. On 31/1/2005, she withdrew the first appeal with liberty to adopt appropriate proceedings and, in the first week of February, 2005, she filed the present civil revision application. The

learned counsel urged that the applicant had earlier adopted two different remedies. She withdrew those proceedings and has filed the present civil revision application. In this civil application, she has given no explanation as to why she has adopted such a course. There is lack of deligence and absence of good faith.

Hence, the delay should not be condoned.

4. In support of his submissions, the learned counsel relied on several judgments. It is not necessary to refer to all of them. I may only refer to the judgment of the Supreme Court and of this court. In **Madhavrao Narayanrao Patwardhan v. Ram Krishna Govind Bhanu and others, AIR 1958 SC 767**, the Supreme Court was considering section 14 of the Limitation Act. The Supreme Court observed that in considering the question whether in instituting the previous suit and carrying on the proceedings in the wrong court the plaintiff had acted in good faith, it is wrong to apply the definition of good faith contained in the General Clauses Act. Since, the Limitation Act itself contains its own definition, the question should be examined in the light of that definition, that is to say whether the plaintiff acted with due care and attention. In **Ram Bhawan Singh and others, Jagdish and others, (1990) 4 SCC 309**, in the facts of that case, the Supreme Court observed that once the High Court finally decided an issue in writ petition quashing orders of appellate and revisional authorities and restoring that of Consolidation Officer, initiation

of a fresh proceeding before the Consolidation Authorities on ground of wrong advice rendered by counsel was not in good faith and, therefore, section 14 of the Limitation Act was not attracted. In **Brijmohandas Damodardas v. Sadashiv Laxman Naik and another, AIR 1940 Bom. 5**, it was held that the proceeding contrary to a clearly expressed provision of law cannot be regarded as prosecuting another civil proceeding in good faith in the sense in which the words "good faith" are defined in the Limitation Act. In my opinion, the ratio of this judgment will have to be restricted to its own peculiar facts because, there the court observed that the applicant recklessly disregarded the provisions of Order XXI, Rule 16 of the Civil Procedure Code and started to execute the decree without any authority from the court, which passed it and, hence, the applicants were not entitled to the exclusion of the time spent by them in prosecuting the darkhast in the Parner court.

5. As against this, Mr. Karande, the learned counsel for the applicant has relied on the judgment of the learned single judge of this court in **Surajmal Dagduramji Shop v. M/s. Shrikisan Ramkisan, AIR 1973 Bom. 313**. In that case, it is held that section 14 of the Limitation Act should be so construed as to save rather than bar a proceeding. In **Balbindra Singh Jog Singh v. Union of India, 1990 (2) Bom.C.R. 544**, this court has held that if the petition for permission to sue in forma pauperis is filed in wrong court on expert legal advice,

such a petitioner would get the benefit of section 14 of the Limitation Act. He cannot be made to suffer for the act of his advocate. After perusing the above judgments, I am of the opinion that whether a person has acted in good faith or not would always depend on the facts and circumstances of each case. There can be no rigid rules in that behalf. In the present case, the applicant appears to have been wrongly advised. The applicant first filed a writ petition. Then she withdrew it. Under a wrong impression that a first appeal is maintainable, the applicant filed a first appeal. When it was found that it was not maintainable, it was withdrawn and the present civil revision application was filed. In fact, the first appeal was argued before me for admission. The learned counsel for the applicant referred to several judgments and contended that the first appeal was maintainable. However, when it was found that the first appeal was not competent, it was withdrawn and civil revision application was filed. In the facts of the case, I am unable to hold that there is any absence of good faith. Delay is only of 13 days.

Hence, the delay is condoned.

6. Civil application is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)